

Exhibit A

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 JUDITH RAANAN, *et al.*,

4 Plaintiffs,

5 v.

24 Civ. 697 (JGK)

6 BINANCE HOLDINGS LIMITED, *et*
7 *al.*,

Oral Argument

8 Defendants.

9 -----x

New York, N.Y.
January 30, 2025
11:40 a.m.

10
11 Before:

12 HON. JOHN G. KOELTL,

13 District Judge
14
15

16 APPEARANCES

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25

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(Case called)

MR. KUSHNER: Good morning, your Honor. My name is Amiad Kushner from Seiden Law, for the plaintiffs. I'm here with my colleagues at Seiden Law, Jake Nachmani and Jen Bletcher and our cocounsel, Ed MacAllister, from the Perles Law Firm.

MR. BANSAL: Good morning, your Honor. Anirudh Bansal, Cahill Gordon & Reindel, and with me at counsel table are my partners Sesi Garimella and Ivan Torres.

THE COURT: Good morning.

All right. These are motions to dismiss. I'll listen to argument.

MR. BANSAL: Judge, since it's my motion, I assume I will go first?

THE COURT: Yes.

MR. BANSAL: Thank you.

THE COURT: I'm familiar with the papers.

MR. BANSAL: Yes, your Honor, I'll assume that.

Judge, the allegations against the defendants in this case are, at bottom, exclusively allegations of nonfeasance that at times the plaintiffs have tried to cast or dress up as malfeasance, but, essentially, they're nonfeasance, failure to have an adequate AML program, failure to file SARs. And the amended complaint is, in that way, in many ways, no different than the actions brought against other financial institutions

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1 after they've entered into settlements with government agencies
2 over anti-money laundering and sanctions failures, and in those
3 cases, allegations very similar to the ones here, sometimes
4 allegations that are closer to the lines than the allegations
5 against the defendants here are routinely dismissed.

6 THE COURT: I thought that some of the recent cases in
7 the Southern District have sustained similar allegations.

8 MR. BANSAL: Judge, I think the most important case to
9 discuss here is the *Twitter* case, which is a Supreme Court —

10 THE COURT: Whoa. We'll get to *Twitter* in a moment.

11 But when you say these cases are routinely dismissed,
12 I had thought that the two most recent Southern District cases
13 after *Twitter* have sustained similar allegations.

14 MR. BANSAL: Judge, in terms of the cases with the
15 most similar allegations, we would point you, or point the
16 Court, to — if you'd just give me a moment, Judge.

17 THE COURT: *King, Bonacasa.*

18 MR. BANSAL: So pardon me, Judge. I'm just trying to
19 find my discussion of the *King* case in the outline.

20 THE COURT: It's OK. You can get to it when you get
21 to it.

22 MR. BANSAL: I will get to it. I do want to address
23 it.

24 THE COURT: I just stopped you because I just don't
25 think it's an accurate reflection of the landscape, so to

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1 speak.

2 MR. BANSAL: I hope to persuade you otherwise, Judge.

3 THE COURT: OK.

4 MR. BANSAL: In the *King* case — I've now found my
5 notes about it — the defendants were alleged to have provided
6 banking services for decades to notorious terrorists. They
7 placed them on white lists so they had reduced scrutiny, and
8 Judge Schofield still dismissed the claims of primary liability
9 because they were not acts of international terrorism, the
10 banking services.

11 But with respect to the aiding and abetting liability
12 — and we can get to that if —

13 THE COURT: Isn't that really the case? Primary
14 liability is a heavy lift, but secondary liability under the
15 more recent statute, which is what was at issue in *Twitter*, is
16 certainly a more difficult claim to dismiss. Sure, lots of
17 cases have dismissed primary liability, and this case has three
18 claims — two on primary liability, one on aiding and abetting
19 liability. But doesn't the rubber hit the road really on
20 aiding and abetting liability?

21 MR. BANSAL: I would agree.

22 THE COURT: So if you simply count up the cases and
23 say, look, here are all the cases that have dismissed primary
24 liability, yes, you have a good claim with respect to two of
25 the three claims, but that leaves aiding and abetting

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1 liability.

2 MR. BANSAL: Judge, with respect to the cases on
3 aiding and abetting liability, the cases most analogous to this
4 one have dismissed aiding and abetting claims. I'm talking
5 about *O'Sullivan* before Judge Swain, *Freeman*, Waldman in the
6 Eastern District, *Siegel* before Judge Cote that went to the
7 Circuit. They all involved breaches of anti-money laundering
8 and sanctions duties, just like the plaintiffs allege here and,
9 in some cases, much more egregious.

10 So, for example in the *Siegel* case in front of Judge
11 Cote, the bank there failed to take reasonable steps to ensure
12 that it was not dealing with banks that have links or
13 facilitate terrorist financing. I'd say that's on all fours or
14 very similar to what the plaintiffs are alleging here, and that
15 they didn't conduct diligence on high-risk accounts. That's
16 also similar to what the plaintiffs are alleging here. But
17 more than that, the bank there altered, falsified, or omitted
18 information from payment messages that involved prohibited
19 companies and institutions for the express purpose of
20 concealing the financial activities and transaction from
21 detection or monitoring by United States authorities.

22 Judge, I think that goes further than what the
23 plaintiffs have alleged here, and Judge Cote and then the
24 Circuit found that those allegations were not sufficient to
25 allege aiding and abetting liability, even though in the *Siegel*

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1 case the complaint alleged that purchases and expenses directly
2 related to the attack that was at issue there, including
3 travel, including visa costs, that they were underwritten by
4 and funds moved through the customer that was improperly
5 onboarded and whose transactions were allowed to go through.

6 THE COURT: What was the statute at issue in that
7 case?

8 MR. BANSAL: Judge, if I'm not mistaken, it would have
9 been JASTA. Perhaps this was before. Let me just check for a
10 moment, your Honor.

11 Judge, this may have been — this was after JASTA, so
12 I believe the aiding and abetting count would have been
13 evaluated under JASTA.

14 THE COURT: What do you think the best case is for
15 your motion are? Put *Twitter* aside for a moment. We'll
16 discuss *Twitter* in a moment. But what are the cases that you
17 think most support your position?

18 MR. BANSAL: Sure, Judge. I would point to
19 *O'Sullivan*. The defendant was alleged to have violated Iran
20 sanctions by providing financial services to Iran and its
21 agents and proxies and helped Iran fund and support terrorist
22 organizations that carried out the attacks. Judge Swain
23 recognized that the bank had violated its duties in those
24 regards, in fact, duties that were designed principally to
25 prevent terrorist activity, but she nonetheless dismissed the

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1 aiding and abetting account.

2 In the *Waldman* case in the Eastern District, the
3 plaintiff's alleged that the bank there set up laundromats —
4 so it's much more purposeful — in Russia and Germany, and it
5 was aware that the services that were provided were being used
6 by organizations to engage in criminal activity. And, again,
7 the judge in the Eastern District found that — I think it was
8 Gonzalez, Judge — found it was insufficient to state an aiding
9 and abetting claim.

10 I pointed to *Siegel* as well. And, Judge, if you'd
11 like, I can send you a short letter after the argument.

12 THE COURT: No, I have the briefs.

13 MR. BANSAL: You have the papers, right? So those are
14 among the cases.

15 THE COURT: If there's supplemental authority that's
16 not in the briefs, the parties are welcome to provide it to me.
17 But, no, I've got more than enough briefs.

18 MR. BANSAL: I think, Judge, the cases before *Twitter*
19 — even though aiding and abetting cases before *Twitter* came
20 out against the plaintiffs, *Twitter*, if anything, narrowed the
21 class of cases that can be brought as aiding and abetting cases
22 under JASTA. *Twitter*, importantly, drew a very clear
23 requirement — or imposed a requirement of a very clear
24 connection between the conduct of the nonfeasance that is
25 alleged and the attack or the injury, the tort, that the

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1 plaintiffs are suing over.

2 THE COURT: I thought that *Twitter* is somewhat
3 equivocal on that. Depending upon the gravity of the action,
4 the gravity of the results, the more likely — the more that
5 the comparison is to providing a firearm to a dangerous person.
6 Even though you don't know that that firearm is going to be
7 used to kill someone, you can be held liable for aiding and
8 abetting the murder of that person. That seems to weaken
9 substantially the kind of scienter that the Supreme Court
10 requires for an aiding and abetting.

11 MR. BANSAL: Judge, you are right that the *Twitter*
12 case outlined a sliding scale. So if the resistance — the
13 more passive — sorry, the assistance, the more passive the
14 assistance was, the more there would have to be scienter and
15 something that actually connected the nexus with the attacks.
16 So I'm happy to go through that, Judge, because, in my view —
17 sorry.

18 THE COURT: So here you have allegations that the
19 defendants knew that they were providing — I mean, in
20 construing the allegations in favor of the nonmoving party,
21 that the defendants knew that they were providing financial
22 assistance to Hamas and allowing Islamic Jihad, and they did it
23 in a substantial way, \$60 million, they allege, and then the
24 funds end up getting used for a horrific terrorist act.

25 Now, is that, as a matter of law, not sufficient to

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1 allege aiding and abetting the terrorist act?

2 MR. BANSAL: Judge, I don't think that the complaint
3 is fairly read as having the kind of connection that you just
4 outlined.

5 THE COURT: It doesn't allege that the defendants knew
6 that the money was going to be used for the October 7 attack.
7 I think — unless the plaintiffs tell me differently, I think
8 that's common ground. What the plaintiffs say is they don't
9 have to allege that. It's like providing the gun to the person
10 even though you don't know that the gun is going to be used to
11 kill.

12 MR. BANSAL: Judge, first off, I don't agree with the
13 premise that Binance's services are a gun.

14 THE COURT: That?

15 MR. BANSAL: Binance's services are a gun. I don't
16 agree with the premise that they're inherently dangerous. I
17 recognize in *Twitter* the Supreme Court left open the
18 hypothetical situation where something was so inherently
19 dangerous, so unusual, that like a gun — or I think the
20 example they gave was morphine, right, a supplier of morphine
21 whose product was misused because they gave an unusual amount
22 of it — they could be held, almost like a coconspirator,
23 accountable for the reasonably foreseeable consequences of that
24 use of the inherently dangerous product. There is really no
25 plausible allegation that cryptocurrency or Binance's services

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1 were inherently dangerous. The plaintiffs say and acknowledge
2 it is used by 100 million people. The documents that
3 plaintiffs incorporate cite \$9 trillion worth of transactions
4 over the time period that the amended complaint covers. There
5 are any number of public acknowledgments that cryptocurrency is
6 used for all sorts of legitimate purposes.

7 THE COURT: But the plaintiffs increase their
8 allegations by a couple of things: first, public statements by
9 the defendants, which suggests that they were at least open to
10 having their services used in furtherance of crime, and the
11 fact that they are, unlike *Twitter*, regulated with
12 know-your-customer anti-money laundering requirements, which
13 they are alleged not to have followed.

14 MR. BANSAL: Judge, may I address both of those in
15 turn?

16 THE COURT: Sure.

17 MR. BANSAL: With respect to the knowledge allegation,
18 Judge, you will see in the paragraphs that the plaintiffs cite
19 in their complaint that the analysis that they've done, which
20 is disclosed to nobody but the plaintiffs —

21 THE COURT: I'm sorry?

22 MR. BANSAL: The analysis that the plaintiffs have
23 done has been disclosed to nobody but the plaintiffs. It's not
24 outlined in the — what kinds of conclusions they draw, how
25 solid those conclusions are — none of that's set out. I'm not

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1 saying it has to be, but there is certainly no allegation that
2 any of the associations that the plaintiffs have found between
3 those \$60 million in transactions, those accounts that they
4 have conducted in preparing their analysis for this case, that
5 any of that was evident to Binance at the time that these
6 transactions were going on.

7 They have alleged, Judge, that there is public
8 information that Binance was used by Hamas. There was a screen
9 that they put in their complaint that you could click on
10 Binance — you could click on one of six exchanges. They've
11 also said in their complaint that Hamas also used other
12 exchanges, much like it uses *Twitter* and Google and cell phones
13 and all kinds of other things. There's nothing special about
14 the relationship between Hamas and Binance.

15 The point I'm trying to make, Judge, the knowledge
16 that they are attributing to Binance is either after the fact
17 or it's this general knowledge of the fact that Hamas was
18 conducting business on Binance's platform. And to that point,
19 Judge, the *Twitter* court said that it is not enough "as the
20 plaintiffs contend, that a defendant gave substantially
21 assistance to a transcendent enterprise separate and floating
22 above all the actionable wrongs that constituted it. Rather, a
23 defendant must have aided and abetted by knowingly providing
24 substantial assistance to another person in the commission of
25 the actionable wrong."

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1 That's what the plaintiffs — and I think the Court
2 identified it — have completely failed to allege, that there
3 is any connection, that Binance had any advance knowledge of
4 any attack, that Binance intended to support any attack. I
5 think the court used in *Twitter* no act of encouraging,
6 soliciting, or advising the commission of the Reina attack that
7 would normally support an aiding and abetting claim. I think
8 that's important, Judge. The Supreme Court said these are the
9 kinds of things that would normally support an aiding and
10 abetting claim. My position, respectfully, is what's normal in
11 an aiding and abetting case, those allegations are utterly
12 missing in this case.

13 I can go on to the regulated part, Judge. I'm happy
14 to address that.

15 THE COURT: Go ahead.

16 MR. BANSAL: So, Judge, not that issue, it is true
17 that the *Twitter* court said that you might have a better case,
18 plaintiffs, if there was a duty, but then the court actually
19 goes on to assume a duty. It assumes that a duty existed and
20 says that, even if there were such a duty, a duty to stop
21 transactions — this is at page 501 — it would not transform
22 defendant's distant inaction into knowing and substantial
23 assistance that could establish aiding and abetting liability
24 for the attack.

25 I would also point out, Judge, that all of the bank

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1 cases that I have discussed — *O'Sullivan, Freeman, Waldman,*
2 *Siegel* — they all involved breaches of the very same duties
3 that the plaintiffs say that Binance breached through its
4 inaction here, and all of those cases rejected aiding and
5 abetting claims.

6 THE COURT: Go ahead.

7 MR. BANSAL: So, Judge, I think that the thing that is
8 most missing from the plaintiffs' complaint really is any
9 allegation of scienter. And, Judge, to the issue of a sliding
10 scale, I would note that in *Twitter* there was an algorithm that
11 matched ISIS's videos and messages with other users based on
12 those users' information and history; in other words, *Twitter*
13 was matching with users that were more likely to be ice Is
14 recruits. There's no such allegation with respect to Binance.

15 Plaintiffs — we talk about knowledge. Plaintiffs
16 were alleged in *Twitter* — sorry, plaintiffs allege that
17 defendants have known that ISIS has used their platform for
18 years but failed to stop. The plaintiffs here have alleged no
19 more. In fact, the plaintiffs say that, well, it was publicly
20 known that Hamas used Binance and other exchanges. Obviously,
21 it was much more publicly evident with respect to *Twitter*.
22 Anybody could go on and see an ISIS video. And whereas a Hamas
23 account, a Hamas wallet is not going to be labeled "Hamas,"
24 ISIS videos are all labeled ISIS videos. There's no secret.
25 There could have been no secret to *Twitter* that ISIS had their

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1 content on their platform to recruit and fund terrorism.

2 Google went way beyond that. Google reviewed and
3 approved ISIS videos on what appears to be a systematic basis,
4 and it shared advertising revenue with ISIS. And the Supreme
5 Court said that was not enough, and the reason the Court said
6 that was not enough is because there was no connection to the
7 actual attack in that case.

8 THE COURT: By the way, the allegations in the various
9 other complaints, like CFTC and SEC, the plaintiffs rely on the
10 allegations in those complaints. In considering the motion, I
11 shouldn't disregard those allegations, should I?

12 MR. BANSAL: I don't think you should, Judge. I think
13 you should look at them because what they say is nothing about
14 intentionally aiding terrorism. The DOJ plea agreement, Judge,
15 doesn't mention that. The FinCEN agreement says that Binance's
16 AML lapses allowed bad actors to access its platform, again, as
17 has happened with so many other financial institutions. When
18 the plaintiffs describe what was allowed to enter the platform,
19 they will leave ellipses out when it says it allowed blank,
20 blank, blank terrorism, but what you'll see in those blanks is
21 all kinds of other illicit activity — gambling, ransomware,
22 things like that. So when the plaintiffs, for example, say in
23 their opposition papers that Binance looped its diligence
24 intentionally, knowing that it would be used by criminals, what
25 they actually cite to shows in the order. What they actually

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1 cite to shows that that was a loophole that, in that chat that
2 they cited, was for laundering drug money. Not a good thing.
3 No excuse for it, but it's not about supporting terrorism.
4 There's no intention to support terrorism specifically. It's
5 just a lapse of AML controls that allowed — allowed, did not
6 encourage, but allowed — all manner of activities to occur.

7 THE COURT: All manner of criminal activities
8 including terrorism.

9 MR. BANSAL: Judge, again, no different than any other
10 bank case. No different than Twitter. I just do want to point
11 out —

12 THE COURT: Oh, but Twitter has no know-your-customer
13 anti-money laundering requirements under the law.

14 MR. BANSAL: Judge, like I was just saying, the Court
15 assumed that, even if such a duty existed, it wouldn't be
16 enough. And then I went through the bank cases where there was
17 exactly that duty, right?

18 THE COURT: But we're talking about Twitter just for a
19 moment. Twitter is under none of those obligations, right?

20 MR. BANSAL: Correct.

21 THE COURT: OK. Go ahead.

22 MR. BANSAL: But Twitter — in the *Twitter* opinion,
23 the Court assumed that, even if such a duty existed, there
24 would be — it would not transform what happened in that case
25 into aiding and abetting.

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1 THE COURT: It's a question of the number of
2 additional factors, if you will. And, certainly, a regulatory
3 scheme, which includes know-your-customer rules, to avoid
4 making your system available to known criminals or terrorists
5 is a factor that would support aiding and abetting liability.
6 Not saying that it's enough. It simply is one of the factors
7 that distinguishes this case from *Twitter*.

8 MR. BANSAL: It is a factual factor, Judge, that does
9 — that is not present in *Twitter*, but it is present in all of
10 the cases — the *O'Sullivan* case, the *Freeman* case, the *Waldman*
11 case, *Siegel*. Again, not only the same duties, but the duties
12 stemming from the same statutes, from IEEPA and the Bank
13 Secrecy Acts, were the one that were breached in those cases,
14 and they do not create aiding and abetting liability.

15 Can I just — before we move on, I do want to talk
16 about the plaintiffs' allegations of scienter. Apart from the
17 allegations that, broadly speaking, the plaintiffs say, broadly
18 speaking, that the defendants knew because there was notice
19 that Hamas was transacting on the platform — which, again, the
20 *Twitter* court says was not sufficient. Separate, hovering over
21 the actual attacks, that's not sufficient — apart from that,
22 they do try to cobble together some other allegations that they
23 characterize as showing some intent to assist Hamas.

24 But, I would say, Judge, I want to point out is just
25 mischaracterization of the source materials. So, for example,

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1 in paragraph 28 of the amended complaint, the plaintiffs says
2 that Mr. Zhao "admitted at his sentencing that he realized the
3 seriousness of his crimes in allowing, facilitating, and
4 encouraging terror groups and other criminals to freely operate
5 on the Binance platform." Quite a statement. But when you
6 look at the sentencing transcript, Judge — and we can make it
7 available to you. We'll send to the plaintiffs as well — in
8 the entire proceeding, Mr. Zhao says not one more word about
9 terrorism, let alone facilitating.

10 Page 71 of the transcript, which we'll get to, Judge,
11 in terms of what he recognized the seriousness of, Mr. Zhao
12 said: I failed to implement an adequate anti-money laundering
13 program in the company I founded. I recognize the importance
14 of having a robust KYC/AML program, and that is why I directed
15 Binance to fully cooperate with the U.S. government's
16 investigation, which has been done. OK. So that's one
17 mischaracterization.

18 Then in their motion papers at page 10, plaintiffs'
19 counsel says, "Moreover, Mr. Zhao admitted the connection
20 between defendant's assistance and a future terror attack."
21 Again, quite a statement. They cite paragraph 221 of the
22 amended complaint, but you go to paragraph 221, and there is
23 nothing about that. There's no such admission. The only
24 admission in that paragraph is from the plea agreement in which
25 Mr. Zhao admitted to failing to implement and maintain an

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1 effective AML program.

2 In the same papers, plaintiffs' counsel point to the
3 fact that Binance mischaracterized users' locations, advised
4 users on how to install IP-blocking software, and falsify KYC.
5 It's on jumbled into how the defendants supposedly
6 intentionally supported terrorism. When you look at that, it
7 cites paragraph 180 of the amended complaint, you go there and
8 look at that paragraph and look at the source material for that
9 paragraph, it's all about keeping U.S. users on the platform.
10 There's this whole other part of this case that was concealing
11 the fact that there was U.S. users so they didn't have to
12 shoulder the burdens of an American money service business.

13 THE COURT: So your contention is that there's nothing
14 in the CFTC, SEC, DOJ, FinCEN complaints that the government
15 entities there charged that Binance knew that its failure to
16 follow know-your-customer anti-money laundering practices was
17 making its site available to terrorists. Is that the argument?

18 MR. BANSAL: That there is nothing that makes —

19 THE COURT: No allegations by the government in any of
20 those documents that says that the defendant's knowing
21 violation of the Bank Secrecy Act, know your customer,
22 anti-money laundering process was making its site available to
23 terrorists?

24 MR. BANSAL: And any number of other — it was nothing
25 special about terrorists. That's important, Judge.

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1 THE COURT: No, no, no, just —

2 MR. BANSAL: I'm not arguing that.

3 THE COURT: You're not arguing that?

4 MR. BANSAL: No, I'm not, Judge.

5 THE COURT: OK. Then to say that in their brief they
6 overstated by not referring to the correct portions of the
7 government's complaints that specifically made the allegation
8 that the defendants knowingly violated the Bank Secrecy Act and
9 know-your-customer and anti-money laundering requirements in
10 such a way that they knew that the site was being used by
11 terrorists. I mean, I had thought that there were government
12 allegations precisely about that. You say in a couple of cases
13 they overstated, they jumbled together the illegal use of their
14 site. OK. Maybe they did on a couple of occasions. But what
15 I want to find out is, is there nowhere in any of those
16 complaints that the government actually made those allegations
17 against the defendant?

18 MR. BANSAL: Judge, they have said nothing more than
19 your description of the regulatory settlements just now. It's
20 nothing more than what's said in the complaint.

21 THE COURT: I'm sorry?

22 MR. BANSAL: It's nothing more than what is said in
23 the complaint by the plaintiffs themselves. There's, by the
24 way, nothing in those orders and settlements that shows
25 knowledge that the platform was being used in that way during

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1 2023 or 2022, not contemporaneous knowledge. The knowledge
2 that is alleged is this broad knowledge that Binance was open
3 to the use by bad actors. Now, that's important, Judge.

4 And by the way, before I forget, there's also
5 information in those orders that belies any intent to advance
6 terrorism as opposed to just kind of negligence. And, again,
7 the motive was profit. If you look at those orders, the motive
8 was to have exalted profits over compliance. The defendant
9 prioritized growth and profits over compliance with U.S. law.
10 The purpose of the conspiracy — this is from the DOJ plea
11 agreement — the purpose of the conspiracy was to allow Binance
12 to operate as a virtual currency exchange and gain market share
13 and profit as quickly as possible. Nobody alleges, Judge —

14 THE COURT: If you sell a gun to someone and it's used
15 to kill someone else, the fact that you were selling the gun
16 for profit rather than to facilitate the person's use of the
17 gun would not be a defense.

18 MR. BANSAL: It's not a gun, Judge. It's just a
19 banking service. It's a financial service that both
20 administrations, the new one and the old one, acknowledged are
21 in some ways the future of online transactions. So there's
22 nothing inherent — a gun is dangerous. A gun can only be used
23 for one thing, right? Targets and crime. This is something
24 that is generally available to 100 million users. And that's
25 important, Judge. There's nothing that the plaintiffs have

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1 alleged that says that anyone associated with any terror group
2 got any special treatment, and that's important, Judge.

3 THE COURT: It's certainly an important issue.
4 There's a distinction between products or services that don't
5 have some inherent danger and those that do. At least at this
6 point the government has acknowledged that there is the
7 possibility of danger under some circumstances, and that's why
8 there's a Bank Secrecy Act and anti-money laundering laws and
9 know-your-customer requirements, all of which Twitter and
10 Google don't have.

11 So, yes, it's necessary to draw distinctions, and you
12 correctly point out one of those distinctions.

13 MR. BANSAL: And, Judge, again, I don't want to keep
14 on coming back to this, but I wouldn't want it to be lost that,
15 in the bank cases that I cited, the same duty existed from the
16 same statutes.

17 Before I move on from the orders, Judge, I was
18 reminded by my colleague that there are other parts of those
19 orders that, again, belie the intent that the plaintiffs are
20 trying to ascribe to the defendants. In the consent order with
21 the — with FinCEN, excuse me, at page 46, speaking about the
22 Al-Qassam Brigade, which is the military wing of the
23 Palestinian Hamas organization, the order says that, while
24 Binance filed no SARs, Binance had proactively cooperated with
25 the global law enforcement to combat terrorist financing and

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1 blockchain vendor to combat terrorist financing and cooperated
2 with Israeli law enforcement in numerous seizures related to
3 the Al-Qassam Brigade.

4 So where there is intentionality, where there is
5 action, it is actually to stop terrorism. The inaction allows,
6 like every other time there are AML failures, any number of
7 illicit — types of illicit conduct to occur, it is not
8 directed at terrorism, Judge. And the reason, Judge, that I
9 say that is important — and maybe the Court already knows
10 enough about this, and you can cut me off if you do — but the
11 *Twitter* court did find it very important that *Twitter* treated
12 everybody the same. There was no preferential treatment given
13 to ISIS in that case, and there's no preferential treatment of
14 Hamas. In fact, what plaintiffs' main complaint is here is
15 that Binance treated transactions and wallets that the
16 plaintiffs now associate with terror groups, Binance treated
17 those wallets like they did all other wallets; that they
18 treated them the same by doing nothing, by filing no SARs, by
19 not doing KYC, by not stopping the transactions, by just
20 letting the transactions go through uncritically. And that's
21 exactly the type of nonpreferential treatment that the *Twitter*
22 court said was insufficient. The *Twitter* court said, by the
23 plaintiff's own allegations, those platforms appear to transmit
24 most content without inspecting it. I recognize there are
25 distinctions, including there's the Bank Secrecy Act, so

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1 there's an obligation.

2 THE COURT: It is, on one level, somewhat breathtaking
3 to take the position that it's OK for a regulated entity to
4 say, sure, we accept terrorist accounts which allow the
5 transmission of funds to terrorists because we treat terrorists
6 just like anyone else, and if you want to use our account to
7 finance what you do, that's OK. We're open, and in fact, we
8 advertise that crime can be committed on our site.

9 MR. BANSAL: Judge, I don't think it was ever
10 advertised. That's not part of — that's not the messaging.
11 There's no advertisement that says crime can be committed on
12 our site. The plaintiffs are referring to internal messages
13 which were, you know, gallows humor, jokes by people about the
14 lapses in AML control. But there's no advertising. There's no
15 holding the company out as this is a place where crime can be
16 committed. Absolutely not. It's an exchange, right?

17 Judge, it's not OK. I'm not saying — no one is
18 saying it's OK to have an insufficient anti-money laundering
19 program that allows illicit activity to go unreported in
20 violation of Bank Secrecy Act and IEEPA obligations. In fact,
21 the company paid \$4 billion and Mr. Zhao went to jail for it.
22 So it's not OK. It's not OK. What we're talking about is
23 whether —

24 THE COURT: Hold on. So there's an acknowledgment
25 that it's not OK, but this case is about what the consequences

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1 of doing something that's not OK are in the civil context,
2 right?

3 MR. BANSAL: Judge, it was also not OK for Google to
4 share revenue with ISIS, inspect their videos, and put them
5 online even though they were being used to recruit people for
6 horrific things. Not OK. Not OK for Wall Street banks,
7 household name banks, to have stripped wires, to have changed
8 payment messages, to have told customers how to say don't say
9 Iran, say Dubai across the sea, use code words. All of that is
10 not OK, and those banks paid their fines for it. They settled
11 with the government. They encountered all kinds of collateral
12 consequences, but they didn't have to pay plaintiffs who were
13 not injured by their conduct, and that's our point. That's the
14 argument, not that it's OK.

15 THE COURT: Which leads us, then, to issues of
16 personal jurisdiction and the standing of all of the
17 plaintiffs, unless there's something else that you wanted to
18 say on *Twitter* and the general subject.

19 MR. BANSAL: I could, but I want to anticipate, so as
20 not to waste the Court's time, something that I very much
21 expect my adversary to raise when they stand up, and that is
22 paragraph 215 of the complaint.

23 THE COURT: I'm sorry?

24 MR. BANSAL: Paragraph 215, 215, of the complaint,
25 which is, in my view, the closest that the amended complaint

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1 comes to any conscious conduct that is directed at anyone with
2 Hamas, with a Hamas association. And the plaintiffs cite it
3 many, many times in their papers, and I do assume they're going
4 to talk about it today.

5 That is a 2020 incident, July of 2020 incident. And
6 in the amended complaint, it says that in July of 2020, a
7 third-party service provider flagged a user's account as having
8 an association with ISIS and Hamas. And the company's chief
9 compliance officer said in an internal chat: "This is very
10 dangerous for the company, but if he is a VIP, offboard him,
11 and let him take his funds and leave. Tell him he was flagged
12 by third-party compliance tools."

13 Plaintiffs repeatedly say: There it is. That's the
14 smoking gun. That is the instance in which there is
15 intentionality directed at somebody who is flagged to have an
16 unidentified ISIS and Hamas association. But that single
17 incident which plaintiffs can come up with over the course of
18 however many years of a particular account's Hamas association
19 was July 2020, three years before the October 7, 2023, attacks.
20 The person who was offboarded is not alleged to have any
21 connection with the October 7 attacks. Even his association
22 with Hamas is unclear.

23 And he was offboarded, Judge. He was no longer
24 permitted to be on the platform. So once this Hamas
25 association — that's what I meant. Once there were identified

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1 Hamas associations, once that was flagged, he was not permitted
2 to conduct transactions on the platform anymore. That's not
3 substantial assistance.

4 The plaintiffs will say, well, the compliance officer
5 said he could take his funds and leave, and they tell him you
6 were flagged. But there's no suggestion that the funds that he
7 took were used in any way to further the attacks, not even any
8 suggestion that the person involved was involved in the
9 attacks. And, again, that is much less than what was done in
10 Google. If you look at the *Twitter* case, the court said we
11 don't know how much money that was that Google's taken in in ad
12 revenue. It's not connected to any attacks.

13 THE COURT: The plaintiff can correct me if I'm wrong,
14 but I didn't think that the complaint was alleging that the
15 defendants knew that their money was being used directly for
16 the October 7 attack. I don't think that they make that
17 specific allegation. I think that what they attempt to do is
18 to say that the defendants knew that their money was being
19 routed through the defendant exchange, and it was being used by
20 Hamas and Palestinian Islamic Jihad for what they do:
21 terrorism.

22 A specific connection to the October 7 attack, I don't
23 think the plaintiffs have made that allegation. They can make
24 it when they get an opportunity in a moment. But I think what
25 they say is you have to look at all of the circumstances. What

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1 was the knowledge on the part of the defendants with respect to
2 who they were dealing with, whether what the general use of
3 those funds was for terrorism actions, not the specific
4 terrorist act.

5 MR. BANSAL: Judge, I'm comfortable with that
6 description of their complaint.

7 THE COURT: Maybe they'll tell me, no, I've missed it.

8 MR. BANSAL: All I would say is that's plainly
9 insufficient under the Supreme Court's decision in *Twitter*
10 because they do say that support for an organization hovering
11 above the attacks is not sufficient. I agree with you, Judge,
12 that there is a sliding scale. Where that is the case, there
13 must be a stronger showing, they said, of scienter, and they
14 have not made it here is our point.

15 So, I'm happy to move on to personal jurisdiction,
16 Judge, unless the Court has any more questions on substantial
17 assistance.

18 THE COURT: No.

19 MR. BANSAL: Judge, the plaintiffs have, generally,
20 three groups of jurisdictional allegations: The first is that
21 the defendants deliberately solicited and did business with VIP
22 market maker customers in New York that provided Binance with
23 liquidity necessary to function, Binance's efforts to hide
24 their New York activities were tailored to what they say is
25 criminal and terrorist usage, and then the plaintiffs attempt

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1 to link this activity to the claims in the amended complaint by
2 just saying that there was an AML failure.

3 Judge, these allegations are not sufficient. Under
4 CPLR 302, the plaintiffs have to allege a nexus between their
5 claims and the defendants' transaction of business in New York,
6 and the plaintiffs haven't done that. What they have alleged
7 was done in New York are things that are necessary for Binance
8 to run at best — at best — because they're not really —
9 because the plaintiffs say that it was about 15 percent of the
10 revenue, New York. But even accepting, Judge, their claim that
11 New York customers provided liquidity necessary for Binance to
12 function, that doesn't do it.

13 I'll let you ask your question.

14 THE COURT: There's no question that they meet the
15 first part, an allegation that the defendants were doing
16 business in New York, right?

17 MR. BANSAL: Correct, there's some business here.

18 THE COURT: Then there's the question whether the
19 claims in the case arise out of the doing business in New York.
20 Why doesn't that create, at best, an issue of fact to open up
21 discovery with respect to the nature of the activities in
22 New York and whether that has a sufficient connection? There's
23 been no discovery with respect to that, so I just have to
24 decide it on the allegations in the complaint. Don't the cases
25 indicate that, under those circumstances, at the very least, I

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1 need discovery to determine whether the allegations of a
2 connection between the business and the complaint are
3 sufficient?

4 MR. BANSAL: Judge, if there is an indication that
5 something could be gained by personal — by jurisdictional
6 discovery, then it's within the Court's discretion to grant it.
7 Maybe my colleague is going to stand up here and say that there
8 were terrorists in New York whose business was somehow
9 supporting the attacks, but there's no such allegation. And
10 the only way, Judge, for them to make their argument that the
11 activity in New York was somehow connected to the attack is to
12 say that the activity in New York is connected to everything
13 that Binance does. It's connected because it's essential to
14 the running of the company. And, essentially, what they're
15 doing is they're transforming 302 into a general jurisdiction
16 statute. They're not making that argument, Judge. They're
17 making a specific jurisdiction argument, and they don't have it
18 because there's no connection between what they say occurred in
19 New York and anything having to do with the overseas attacks.
20 Maybe they'll draw some connections, but they haven't through
21 rounds and rounds of briefing before the magistrate court.

22 THE COURT: That assumes that what they have to show
23 is the connection between doing business in New York and the
24 October 7 attack rather than simply financing of terrorism,
25 part of which ends up being the October 7 attack.

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1 MR. BANSAL: But that's the claim, Judge. The claim
2 that they have made and the claim that they must make for it to
3 survive is that Binance's conduct substantially assisted in the
4 commission of the attacks; that Binance was a culpable
5 participant in the attacks and wanted to bring them about
6 through its actions — I'm paraphrasing slightly *Twitter* —
7 through its actions wanted to bring the attacks about. They
8 haven't come close to making that allegation.

9 I think everything the Court has said is correct on
10 that. They're not making any allegation of a connection.
11 They're basically trying to say that because there was support
12 on the platform, at best — right, at best, giving them every
13 benefit of the doubt — because the platform was used by Hamas
14 and Binance had some notice of that, then Binance is just
15 responsible for everything Hamas does. And that's not what
16 *Twitter* says. *Twitter* says that that can happen in a situation
17 like Halberstam wife. Halberstam's wife was his accountant.
18 She didn't do anything else. So when he went and committed his
19 robberies, she was responsible for these because she was
20 essentially his coconspirator. It was a common enterprise.
21 They have not made the allegation, and there's no plausible
22 allegation that it's that kind of relationship. There's no
23 relationship between Binance and Hamas.

24 THE COURT: OK.

25 MR. BANSAL: So that's what they have to allege,

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1 Judge, in order to sustain their claim. That is their claim,
2 and there's no relationship between that claim, which is the
3 only sustainable claim, and New York.

4 THE COURT: Let me ask you another question. I don't
5 know if you were going to get to it.

6 You alleged that there are reasons for about 18 of the
7 40 plaintiffs to be dismissed because they're not U.S.
8 nationals or because they're not the immediate family of a U.S.
9 citizen. And my question is, the case plainly — if I decide
10 the other parts of the motion, if the case were going forward,
11 why is it necessary to reach the standing of each of the
12 plaintiffs? Some of them might have issues of fact as to
13 whether they're sufficiently connected, whether they're part of
14 the immediate family, whether they're sufficiently connected to
15 be considered like the immediate family. Why should I decide
16 that part of the motion as part of the initial motions in the
17 case?

18 MR. BANSAL: Judge, there is an Article III standing
19 requirement. The plaintiffs have had an opportunity, and they
20 did submit affidavits from some of their clients, and we have
21 no objection to the Court considering those affidavits.
22 Ostensibly, if there was more factual matter to say about any
23 of the other plaintiffs, they would have raised it.

24 I should pause here to say — I meant to — I have
25 nothing but sympathy for these people. I have nothing but

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1 sympathy for these people, right, as a person. But the law
2 imposes requirements, and it would —

3 THE COURT: OK.

4 MR. BANSAL: — broaden the case, Judge, if we had to
5 do discovery against them and they get deposed. Why do that if
6 there's no case?

7 THE COURT: OK. I understand the argument.

8 MR. BANSAL: Judge, I don't have anything else, and I
9 won't take up the Court's time with some sweeping conclusion.
10 I suppose if you have other questions after the plaintiffs'
11 case —

12 THE COURT: I'll give you the opportunity to reply.

13 MR. BANSAL: Thank you, Judge.

14 THE COURT: Thank you.

15 MR. KUSHNER: Your Honor, I share your reaction that
16 some of the arguments from defendants' counsel were
17 breathtaking.

18 THE COURT: Well, before we get to that, the papers
19 indicate that there's a motion to transfer the Gess case from
20 Alabama to this Court. What's the status of that motion at
21 this point?

22 MR. KUSHNER: I actually don't know the status of that
23 motion.

24 MR. BANSAL: I can speak to it, Judge.

25 THE COURT: OK.

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1 MR. BANSAL: Because it's our motion.

2 THE COURT: Yes.

3 MR. BANSAL: It has been argued — and I'll be
4 corrected if I'm wrong — but we told the court that your Honor
5 is having argument and will likely decide this motion —

6 THE COURT: In due course.

7 MR. BANSAL: Due course, good term, yeah. So,
8 therefore, that there's no reason to decide that motion until
9 this Court has decided its motion.

10 THE COURT: OK.

11 MR. BANSAL: One second, your Honor. Your Honor, I
12 might have mistaken something.

13 (Counsel conferred)

14 MR. BANSAL: We told them that we would inform the
15 court within two days of a decision. That's the only
16 amendment.

17 THE COURT: Two days of a decision by me?

18 MR. BANSAL: By you, Judge.

19 THE COURT: Thank you.

20 Go ahead, Mr. Kushner.

21 MR. KUSHNER: Thank you, your Honor.

22 So we've heard defendants' counsel, I think, minimize
23 some of the alleged misconduct by his clients here. He said
24 there's only a single incident that we've alleged involving
25 affirmative assistance to Hamas. He characterized some of the

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1 internal communications where Binance's senior leadership is
2 mocking the regulations as "gallows humors," and he also
3 attempted to minimize the significance of Mr. Zhao's plea
4 agreement.

5 I think when Mr. Zhao is sentenced to several months
6 in prison and Binance is fined over \$4 billion, it's not
7 something that can be minimized. The fact is that defendants
8 pled guilty to criminal conduct which bears directly on the
9 allegations of this case. They admitted to knowingly failing
10 to register as a money services business, willfully violating
11 the Bank Secrecy Act by failing to implement and maintain an
12 effective anti-money laundering program. They admitted to
13 willfully causing violations of U.S. economic sanctions issued
14 pursuant to the International Emergency Economic Powers Act.
15 And Mr. Zhao — and this is critical — he admitted to causing
16 Binance to commit these crimes, and he went to prison for that.

17 Now, your Honor, the critical point here is that the
18 statutes that Binance and Zhao admitted to violating are
19 expressly designed to prevent money laundering by terrorists
20 and criminals.

21 THE COURT: The argument that your adversary was
22 making was that there are some specific allegations in your
23 complaint that combine, if you will, what the anti-money
24 laundering, know-your-customer requirements of the Bank Secrecy
25 Act were intended to prevent, which are criminal activities

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1 that include money laundering, to facilitate criminal
2 activities including drug transactions and money laundering, to
3 facilitate the laundering of funds used in a variety of
4 criminal activities, and you allied all of that with terrorism.

5 So some paragraphs of your complaint were not accurate
6 because they put in terrorism where the unredacted, unellipsed
7 original didn't include terrorism. That was the argument, or
8 at least the implication of the argument. But Mr. Bansal said
9 he was not trying to make the argument that there are no
10 allegations in the complaint that one of the purposes of the
11 anti-money laundering provisions is to prevent the facilitation
12 of terrorism. Then he said that there's no allegation that the
13 defendants knew that their violations of law were facilitating
14 the October 7 attack, and I said I didn't think that the
15 complaint was making that allegation. So it's your turn to
16 tell me whether the complaint is making that allegation.

17 MR. KUSHNER: Your Honor's absolutely correct. The
18 complaint does not allege that the defendants intended to bring
19 about the October 7 attacks. It does not allege that the
20 defendants intended to bring about any act of terrorism. The
21 allegation is, as your Honor correctly pointed out, when you're
22 knowingly providing financial services to terrorists, you can't
23 be held liable for aiding and abetting. Your Honor also
24 correctly drew the analogy with some of the other cases,
25 including the *Halberstam* case, which the Supreme Court

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1 discussed extensively in *Twitter*. The defendant in that case
2 was providing, essentially, financial services to her live-in
3 partner who was the one that was out there committing
4 burglaries. So this defendant was doing tax forms, counting
5 money. There's no allegation that the defendant in the
6 *Halberstam* case intended to commit a murder, but the Supreme
7 Court says, and *Halberstam* says, you don't need to allege that
8 as long as you can show that someone knowingly provided
9 substantial assistance to someone committing a wrongful act, in
10 this case burglary — in the *Halberstam* case, it's burglary —
11 and you can show that a murder is a foreseeable consequence of
12 a burglary, that's aiding and abetting. OK? And that's in a
13 nutshell what we're saying here. We're saying that the
14 defendants knowingly provided financial services to Hamas and
15 Palestine Islamic Jihad, PIJ. There are cases which uphold
16 that type of liability.

17 And, your Honor, you asked the defendants about what
18 their best cases were. I think, on our side, *Twitter* is one of
19 our best cases, but the Second Circuit's decision in *Kaplan*,
20 which is from 2021, is also very on point because, there, you
21 have the Second Circuit upholding aiding and abetting liability
22 for a bank where the bank is accused of providing financial
23 services to the Hezbollah terrorist group. And just as we
24 allege here, the allegation in that case is that the bank is
25 aware that it has certain customers that are part of Hezbollah.

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1 Again, there's no allegation in that case that the bank — and
2 this was Lebanese Canadian Bank — there was no allegation that
3 the bank intended to bring about a Hezbollah terrorist attack.
4 There's no allegation that the bank had any knowledge of a
5 terrorist attack. Rather, as the Second Circuit held, the bank
6 can be liable for aiding and abetting because it's knowingly
7 providing financial services to Hezbollah. And that is one of
8 our best cases. And, your Honor, I note that the *Kaplan* case
9 was not even cited in the other side's briefing.

10 Your Honor, with respect to the issue of whether our
11 allegations involve nonfeasance or malfeasance or active or
12 passive, I think that the defendants essentially are
13 disregarding the facts pled. We do allege plenty of active
14 assistance, so it's not simply — it's not simply that Binance
15 is apprised by its own third-party vendor that there's a
16 Hamas-linked user on the platform, and Binance is affirmatively
17 going out and telling this user, hey, you've been flagged.
18 It's not just that. That is one instance, it's true, but it's
19 not just that.

20 By the way, your Honor, let me just pause on that
21 because it's breathtaking the way that they're trying to
22 minimize this. Here, you have a money transfer business, OK,
23 and the very idea that a money transfer business is going to
24 move money for people without asking them who they are, to do
25 absolutely no verification of the customer, don't even ask any

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1 questions, when a money transfer business knowingly does that,
2 to say that they're not enabling illegal activity is just not
3 credible. But that's not even what we're alleging here. We're
4 alleging that they are told by their third-party service
5 provider that, hey, Hamas is on the platform. PIJ is on the
6 platform. And in this specific instance, OK, a money transfer
7 business, which is supposed to be registered — in this case it
8 was not — when a money transfer business is told there is a
9 specially designated global terrorist that is transacting on
10 your platform, the regulatory obligation is to seize — seize
11 — the account of the specially designated global terrorist.
12 You've got to seize those funds. You've got to block those
13 transactions.

14 So not only did Binance not immediately seize the
15 terrorists' funds, they said: Take your funds. You can take
16 your money and leave. Not only do they do that, they said:
17 Guess what, you've been flagged. So they affirmatively
18 assisted this user to evade regulatory scrutiny. So that's
19 pretty significant.

20 But, your Honor, moving money for terrorists is
21 active. Processing transactions is active. That's the heart
22 of this case. And, again, your Honor was, I think, correctly
23 pointing out that the *Twitter* case involved social media
24 companies, and the social media context is different than the
25 context of regulated entities that have KYC requirements and a

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1 whole regulatory framework. I think your Honor hit the nail on
2 the head. There's a very big difference between a video that
3 is posted by a terrorist group on social media versus money
4 going to terrorists. There's no regulatory obligation to seize
5 videos, to block postings, right? That is a completely
6 separate context.

7 So when *Twitter* is — what *Twitter* is dealing with is
8 a completely different context. I would respectfully submit —
9 I think your Honor may have been thinking this — if the
10 *Twitter* court was presented with these facts, they would have a
11 very different discussion of duty. I think that the notion
12 that a regulated entity is just going to allow, knowingly
13 allow, terrorists to transact on their platform and the idea
14 that somehow that duty doesn't trigger aiding and abetting is
15 just — it's not credible. I think the more appropriate
16 analogy is the *Kaplan* case where the regulated entity is
17 knowingly permitting transactions with terrorists and is liable
18 for aiding and abetting.

19 Your Honor mentioned that —

20 THE COURT: Could I stop you there.

21 MR. KUSHNER: Sure.

22 THE COURT: You've been addressing, so far, aiding and
23 abetting, which is Count Three of the complaint. As I told
24 your colleague, primary liability under Counts One and Two is
25 far more problematic, and it's questionable whether you could

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1 make the necessary allegations for primary liability,
2 particularly when you concede that you're not arguing that
3 there was any knowing facilitation of the specific October 7 —
4 I don't want to overstate your position, but you don't appear
5 to be alleging scienter with respect to the specific October 7
6 attack.

7 MR. KUSHNER: Your Honor's absolutely right that
8 primary liability is a more difficult claim.

9 THE COURT: Do you want to just withdraw Counts One
10 and Two?

11 MR. KUSHNER: Well, Count One is the secondary
12 liability. Counts Two and Three are primary.

13 THE COURT: Ahh, I'm sorry.

14 MR. KUSHNER: Well, I don't want to withdraw Counts
15 Two and Three, but I do want to make my best argument for
16 keeping them in, while conceding that they're perhaps not as
17 strong as counsel one. The argument is this, your Honor:
18 There is case law —

19 THE COURT: There is what?

20 MR. KUSHNER: There is case law which suggests that
21 knowingly giving money to a terrorist group does meet the
22 definition of international terrorism in 18 U.S.C.
23 Section 2331. So your Honor already mentioned, I think, the
24 quote about giving money to Hamas is an act dangerous to human
25 life, or your Honor may have said something similar to that.

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1 That is a quote from the Seventh Circuit's decision in *Boim*,
2 and that decision is an *en banc* decision by the Seventh
3 Circuit. It was written by Justice Posner.

4 THE COURT: Judge Posner.

5 MR. KUSHNER: He in that decision upholds a claim for
6 primary liability.

7 THE COURT: Judge Posner.

8 MR. KUSHNER: Judge Posner, sorry, yes.

9 The *Boim* decision has been cited with approval in
10 district courts in the Second Circuit, and I think the Second
11 Circuit also cited it without passing upon whether it was
12 correct or not. But it was cited with approval in
13 *Schansman v. Sberbank*, which is a Southern District decision
14 from 2021. And *Boim* affirmed judgments against charities that
15 donated money to Hamas under a primary liability theory.
16 Again, in those cases, there was no allegation that the
17 charities intended to bring about terrorist attacks.

18 So let me just quote you something from *Boim* on this
19 point. *Boim* wrote:

20 "Donations to Hamas, by augmenting Hamas's resources,
21 would enable Hamas to kill or wound or try to kill or conspire
22 to kill more people in Israel. And given such foreseeable
23 consequences, such donations would appear to be intended to
24 intimidate or coerce the civilian population or to affect the
25 conduct of a government by assassination as required by

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1 Section 2331, paragraph 1."

2 THE COURT: Was that before JASTA?

3 MR. KUSHNER: Yes, it was before JASTA, so that can be
4 read in two ways. One might say that, after JASTA, the same
5 type of allegations would only sound in secondary liability and
6 would not state a primary liability claim, but Judge Posner
7 actually discusses this issue extensively in his opinion. And
8 he notes that Congress has not enacted an aiding and abetting
9 — at least at that time. He goes through that analysis and —

10 THE COURT: So the Anti-money Laundering Act was the
11 only alternative to find liability because Congress had not yet
12 passed secondary liability.

13 MR. KUSHNER: Correct. Look, that is one issue with
14 that case because it is a pre-JASTA case. Your Honor's
15 absolutely right. But the *Schansman* case in the Southern
16 District from 2021 is post-JASTA, and it does kind of reach the
17 same conclusion. That was a decision by Judge Carter. And
18 what he said in that case was: "When banks route payments and
19 maintain accounts for terrorist organizations to enhance their
20 ability to commit terrorist attacks, they are committing acts
21 dangerous to human life."

22 So, your Honor, there is some case law that supports
23 the primary liability theory under the facts we've alleged
24 here, but I acknowledge that the primary liability claim is not
25 nearly as strong as the aiding and abetting claim and also that

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1 there are perhaps cases going the other way on this primary
2 liability.

3 I'd like to go back to address the point about
4 malfeasance versus nonfeasance, I think, and also the related
5 point that defendants did not have contemporaneous knowledge
6 that Hamas or PIJ were transacting on the platform. I think
7 that, to a large extent, they're disputing the facts pled
8 because there are numerous factual allegations that establish
9 that facts, if taken as true, that they were very much on
10 notice that Hamas and PIJ were transacting on the platform. So
11 they were on notice not only from media reports that Binance
12 wallets are being used by Hamas to solicit donations, but there
13 are allegations that their third-party service provider told
14 them that Hamas was on the platform, that PIJ was on the
15 platform.

16 So what they really seem to be arguing, your Honor, is
17 that the complaint hasn't alleged that for every single
18 transaction involving a Hamas or PIJ wallet, that we have to
19 show that Binance knew that somehow that wallet was associated
20 with a terrorist group. But at the pleading stage, we don't
21 have to make that kind of showing. Knowledge can be alleged
22 generally, and I would submit that we put in much more than we
23 need to at the pleading stage to establish knowledge.

24 When you look at all the facts pled in totality, the
25 sheer volume of Hamas and PIJ transactions, when you look at

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1 what Binance was told by its own third-party service provider
2 about Hamas and PIJ transactions on the platform, when you look
3 at —

4 THE COURT: The total amount alleged in the complaint
5 is 60 million, is that correct?

6 MR. KUSHNER: 60 million — that they moved 60 million
7 in funds related to Hamas and PIJ. There's another 40 million
8 or so from the Gaza-based money services business. And, your
9 Honor, that's just a drop in the bucket. That's just what our
10 own expert was able to identify from public information, and
11 it's also a drop in the bucket compared to what the government
12 found. The government found — and this is in paragraph 16 of
13 our complaint — Binance processed over 1.6 million
14 transactions involving U.S. users and users who were blocked
15 persons or users in sanctioned jurisdictions. That's over
16 1.6 million. So we're handicapped because —

17 THE COURT: But you don't know what relationship that
18 has to Hamas and PIJ.

19 MR. KUSHNER: Well, we don't know the details of those
20 1.6 million because it's nonpublic, and our allegations are
21 based on what is public or what we've been able to adduce from
22 public information. We have alleged enough just from what's
23 public to show that there is a staggering amount of Hamas and
24 PIJ activity on Binance. We allege thousands of transactions.
25 You know, the 60 million is thousands of transactions, your

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1 Honor. And just the scale of the defendants' misconduct is
2 staggering when you look at it not only in terms of its scope,
3 in terms of the number of transactions, but the duration —
4 it's over many, many years — and in its deceptive nature. All
5 these are relevant to the analysis of knowing and substantial
6 assistance because, as the Supreme Court said in *Twitter*,
7 knowing whether assistance is — the scienter component and the
8 assistance component are part of a single inquiry. You've got
9 to look at everything, at the totality.

10 So, here, you have a money transfer business that for
11 years, years, is operating without asking any questions about
12 who its customers are, totally disregarding the regulations.
13 And not only are they not following the regulations, but when
14 they're apprised that terrorists are on the platform, they do
15 nothing. They, in some cases, help them evade the regulators.
16 It's not surprising that terrorists and criminals are attracted
17 to the platform because word gets around that Binance is open
18 to anybody.

19 Your Honor, I think this is one reason why this case
20 is so different from probably just about any other ATA case. I
21 don't think there's any other case in which you have such
22 pervasive, willful, company-wide disregard of United States
23 laws designed to prevent the financing of terrorists, and it's
24 directed from the very top of the company and its senior
25 leadership, and it went on for years.

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1 For example, just to take one example, Binance's chief
2 compliance officer wrote in an internal message that, as
3 instructed by Mr. Zhao, Binance would engage in the
4 "international circumvention of KYC to make the U.S. regulatory
5 authorities not trouble us." Now, they point to some other
6 cases where banks may have gotten off or have been found not
7 liable for aiding and abetting, but I don't think there's any
8 other case with this type of pervasive criminal conduct
9 directed from the very top, this kind of willful flouting of
10 regulations and circumventing the regulators. For the chief
11 compliance officer to say we are going to engage in the
12 international circumvention of KYC, that's active, your Honor.
13 What you're doing is you're kneecapping law enforcement.

14 THE COURT: But this case is not about general
15 criminal conduct, but rather about terrorism. So the argument
16 on the other side is, as I said before, some of the statements
17 on which you rely are not specifically related to terrorism.

18 MR. KUSHNER: Some are not, but many are. So, your
19 Honor, paragraphs 214 and 215 of our complaint, we say that —

20 THE COURT: I know. We've discussed that.

21 MR. KUSHNER: Yeah.

22 THE COURT: Can I ask you another question. You can
23 go back to this, but what connection did the business that the
24 defendants did in New York have to the allegations in the
25 complaint sufficient for personal jurisdiction in New York?

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1 MR. KUSHNER: So, your Honor, first of all, I want to
2 just follow up on that, on your comment regarding discovery. I
3 think that discovery is necessary to determine whether or not
4 defendants processed transactions in New York that are directly
5 related to this case. And, your Honor, I note that in
6 Binance's criminal plea agreement, in their statement of facts,
7 they admitted that they processed transfers between users in
8 the District of Washington and Iran, which is a blocked
9 jurisdiction. And I think, to draw an analogy, it's very
10 possible that Binance could have processed transactions between
11 users in the state of New York and Hamas wallets, and that
12 could only be discovered in discovery. So if such transactions
13 existed — and I think it's very likely they did — it would
14 provide a direct nexus between New York and the allegations in
15 this case.

16 But setting that aside, your Honor, setting that
17 aside, the facts pled do give rise to an alternative theory of
18 personal jurisdiction in New York, and that theory is that
19 because Binance's business depended on these market makers in
20 New York, the only way that they were able to operate at all is
21 by knowingly directing conduct to the market makers in
22 New York. And I think that what's critical here is that U.S.
23 users, including in New York, were critical to Binance's
24 business. It's a substantial part of their business.

25 And their variability to operate depends on having

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1 liquidity, and liquidity in turn depends on having these market
2 makers. And our theory of the case is that the platform was
3 opened up to anybody, including terrorists and criminals. One
4 of the reasons why Binance had liquidity is because they were
5 able to open up the platform to anybody. So there is some
6 nexus between creating a market in New York and the fact that
7 anybody was able to use the platform. It may not be as direct
8 a nexus compared to the scenario in which a New York-based user
9 is sending money to a terrorist group and using the Binance
10 exchange, but it nevertheless is a nexus.

11 Now, your Honor, we also say that jurisdiction is
12 proper under Rule 4(k)(2) of the federal rules, and perhaps
13 that's even more clear because the defendants filed a waiver of
14 service. And I didn't hear defendants' counsel say that
15 Binance is amenable to general jurisdiction in any state, and
16 in those types of circumstances where the defendant files a
17 waiver of service and the defendant is not subject to
18 jurisdiction in any state, the court can exercise personal
19 jurisdiction. And so that's exactly the type of situation in
20 which the rule was designed to address.

21 THE COURT: I would have thought that, given the
22 contacts between Binance and the United States, there must be
23 some state in which Binance could be sued, whether it's Alabama
24 or some other state.

25 MR. KUSHNER: But they have not said that, and they've

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1 been given opportunities. It wasn't in their briefs and it
2 wasn't in the argument today. So if they're willing to stand
3 up before your Honor today and represent that Binance is
4 subject to general jurisdiction in some state, then this
5 argument would fall away, but they haven't done that, your
6 Honor.

7 THE COURT: OK.

8 MR. KUSHNER: Your Honor, with regard to the
9 plaintiffs' standing, we agree that the Court does not need to
10 meet that issue at the motion to dismiss stage, and it can be
11 dealt with later.

12 THE COURT: The defendants make a fair argument that
13 it's Article III standing, and I have to do it.

14 MR. KUSHNER: OK.

15 THE COURT: Go ahead.

16 MR. KUSHNER: With respect to standing, does the Court
17 have any particular questions about any particular plaintiffs?

18 THE COURT: No, no. OK. I mean, there are some
19 plaintiffs who plainly don't seem to qualify or who are not
20 United States citizens or survivors of deceased U.S. citizens.
21 So I have to go through each of the allegations. There are
22 about 15 disputed plaintiffs, and I'll do that.

23 MR. KUSHNER: Your Honor, let me, then, briefly
24 address some of the arguments. And for some of the plaintiffs,
25 we are going to withdraw them.

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1 THE COURT: No, I'll rely on the briefs with respect
2 to each of the plaintiffs.

3 MR. KUSHNER: OK. But, just for clarity, the two are
4 Dorian Bosi and Yosef Ben Aderet. The other 16 are in dispute
5 and do have standing.

6 THE COURT: I'm sorry. You're conceding that a few of
7 the plaintiffs should be dismissed?

8 MR. KUSHNER: Two.

9 THE COURT: Two. Which two?

10 MR. KUSHNER: Dorian Bosi and Yosef Ben Aderet.

11 THE COURT: OK.

12 MR. KUSHNER: Unless your Honor has any further
13 questions.

14 THE COURT: No, thank you.

15 Mr. Bansal, at the outset, is jurisdiction possible
16 here under 4(k)(2) because the defendant is not subject to
17 jurisdiction in any state's court of general jurisdiction?

18 MR. BANSAL: Judge, I don't think we have to reach it
19 because I don't think we've been served and — we have not been
20 served.

21 THE COURT: I thought you had agreed to service
22 without waiving any defenses that you had, but I thought that
23 what you were waiving was that you had been served.

24 MR. BANSAL: Well, the plaintiffs signed a stipulation
25 that says that the plaintiffs agree not to argue that the

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1 waiver affects any of the stipulating defendants' other rights,
2 defenses, or objections including but not limited to defenses
3 based upon lack of personal or subject matter jurisdiction. So
4 they're arguing something that they agreed not to.

5 THE COURT: But it's hard to read that as including a
6 defense of lack of service. I mean, lack of personal
7 jurisdiction, you didn't waive, didn't waive other defenses.
8 But what's the purpose of agreeing to receive service if you're
9 going to turn around and say, aha, we weren't served?

10 MR. BANSAL: The purpose of this stipulation was to be
11 able to join issue before the Court, not have to come here in
12 make a 12(b)(5) argument that we weren't served, which would be
13 inefficient because we wouldn't have to take up all of the more
14 substantive issues.

15 THE COURT: Right.

16 MR. BANSAL: So it was an effort to try to streamline
17 the proceeding, preserving our right to challenge personal
18 jurisdiction, obviously, under 4(k)(2).

19 THE COURT: Personal jurisdiction, but I wouldn't
20 think it covered lack of service when you agreed to service.

21 I know that that's an argument, but are the defendants
22 subject to jurisdiction in any state courts of general
23 jurisdiction, or you're not authorized to answer that question?

24 MR. BANSAL: You are correct, Judge, and I don't think
25 the Court has to reach it because, regardless, the plaintiffs

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1 have not met the due process requirements that they would have
2 to meet in order to show personal jurisdiction even under
3 4(k)(2). Even if you ignored the service issue, even if you
4 were to find a company is not subject to jurisdiction anywhere
5 else in the United States, so therefore you would go to the
6 third prong, which is does personal jurisdiction comport with
7 the Constitution, it doesn't because there are no sufficient
8 contacts between the jurisdiction and the conduct alleged. It
9 is a tort-specific test, and the plaintiffs have not met it for
10 the very same reason that they have not met their burden of
11 establishing jurisdiction in New York.

12 THE COURT: OK.

13 MR. BANSAL: So, Judge, while we're on the issue of
14 personal jurisdiction, I just wanted to point out that when the
15 Court asked my colleague what connections are there with
16 New York, I heard the words "very possible," and then I heard
17 the words "very possible" turn into "very likely." And I think
18 that's based on nothing, Judge. I think that's just not a
19 basis to grant jurisdictional discovery that something is very
20 possible. So many things are very possible.

21 Judge, going back to the substantial assistance point,
22 my colleague said the word "willfully" many, many times when he
23 started. I'm not sure what he meant. I think the Court
24 identified it, but to make sure that the record's clear,
25 willfulness in the context of the Bank Secrecy Act is that one

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1 knew that they were supposed to have an effective AML program
2 and didn't have it. It's not willfulness with respect to
3 anything else. So when my adversary comes up and says that the
4 company and Mr. Zhao admitted to willfulness, that's all the
5 willfulness that they admitted to. It has nothing to do with
6 the allegations in this complaint.

7 I think, very importantly, my colleague said — and I
8 tried to get it down as close to quoting as possible — the
9 complaint does not allege that the defendant intended to bring
10 about any act of terrorism. That is what I heard; that's what
11 I wrote down. The transcript will say what it says, but that's
12 what I heard. In *Twitter*, the Court held that the allegations
13 were insufficient because the allegations do not suggest that
14 defendants — I'm quoting now — "culpably associated
15 themselves with the Reina attack, participated in it as
16 something that they wished to bring about or sought by their
17 action to make it succeed."

18 So not only have plaintiffs now conceded that my
19 clients did not intend to bring about the terrible attack that
20 resulted in the tragic injuries to their clients, but that my
21 client did not intend to bring about any act of terrorism. So
22 then all it is is what *Twitter* again found exactly
23 insufficient. It is an allegation that, at best, is an
24 allegation of assistance to the organization floating above any
25 specific act, any act, and that is plainly insufficient. It

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1 helps streamline the case a lot, and I credit my colleague for
2 making the concession because it's clear from the complaint,
3 and I think it ends the case.

4 I do want to talk about *Kaplan* because my colleague
5 did. The *Kaplan* decision was before *Twitter*, but there was
6 much more assistance that was found to have sustained that
7 claim. In that case, in *Kaplan*, the defendant was alleged to
8 have helped a customer called Shahid. Shahid was known to
9 subsidize the families of Hezbollah suicide bombers and,
10 indeed, to provide financial reassurance to prospective suicide
11 bombers. That's a direct connection, direct connection between
12 the assistance given and the attacks, which my colleagues have
13 conceded was not present in this case.

14 Also in *Kaplan*, the bank granted special exceptions to
15 Hezbollah-related customers, special exceptions to
16 Hezbollah-related customers. Again, my colleague has said that
17 there were terrible AML failures. He has said they were
18 pervasive AML failures. There is no allegation of any special
19 treatment. And, again, that is very important under *Twitter*
20 because it bespeaks an utter lack of intent.

21 When my colleague was addressing the pervasiveness,
22 when he was addressing the outrageousness, supposedly, of the
23 conduct and the intent, he mentioned one incident. The one
24 incident that he mentioned was the one in July of 2020 in
25 paragraph 216, which we talked about at length. So I don't

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1 take much from that.

2 Judge, I do want to address the cases that the Court
3 raised, because I had a little time to look up when I was
4 sitting. We talked about the *King* case, the *Bonacasa* case was
5 a case where the assistance that was provided was a structured
6 loan that was specifically so that this company that made
7 fertilizer — which, again, that's a gun, Judge. That's closer
8 to a gun. These are just regular financial services — *Zobay*
9 similarly, that was over the provision of embargoed technology,
10 something that was intended to stay out of the hands of
11 terrorists. It's not money. Money is — that's closer to a
12 gun. It's not exactly a gun, but it's way closer to a gun.
13 This is just money. Not to say that that's not — that that's
14 not significant, but it is not something that is specifically
15 directed at assisting Hamas.

16 THE COURT: Thank you.

17 MR. BANSAL: I don't have anything else, Judge. Thank
18 you.

19 MR. KUSHNER: Your Honor, can I respond briefly?

20 THE COURT: Yes, very briefly.

21 MR. KUSHNER: I'll just respond very briefly on the
22 due process point. So the defendants, they didn't raise this
23 argument that somehow the application of Rule 4(k)(2) would
24 violate due process. They didn't raise it in their opening
25 brief, so it was waived.

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1 But, in any event, your Honor, the test, the due
2 process test, is a nationwide test. It's whether the defendant
3 has contacts with the entire United States, has minimum contact
4 with the entire United States. It's not just New York. The
5 notion that they don't have minimum contact with the U.S., it's
6 really not credible.

7 Let me just read one quote on this point. So in their
8 guilty plea, paragraph 27 of Binance's guilty plea, it said,
9 "It intentionally sought and served millions of customers
10 located in the United States."

11 In paragraph 48 of their guilty plea, Binance admitted
12 that, according to its own transaction data, U.S. users
13 conducted trillions of dollars in transactions on the platform
14 between August 2017 and October 2022, transactions that
15 generated approximately 1.6 billion in profit for Binance.

16 Unless your Honor has further questions. . .

17 THE COURT: No. OK.

18 MR. BANSAL: Thank you, your Honor.

19 THE COURT: Thank you, all. I'll take the motion
20 under submission.

21 (Adjourned)